

08 CV 7928

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

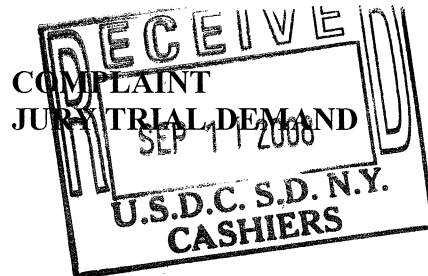
CHAIN & FANTASIA, INC.

Plaintiffs,

-against-

CALLA FASHION CORP. and Dan Kim

Defendants.



COMPLAINT

Chain & Fantasia, Inc ("Plaintiff") brings this Complaint against Calla Fashion Corp. ("Calla"), alleging as follows:

PARTIES

1. Plaintiff is a corporation duly organized and existing under the laws of the State of New York with its principle place of business located at 1239 Broadway, 9th Floor, New York, NY 10001.
2. On information and belief Defendant, Calla is a corporation entity under the laws of New York with its principal offices in New York located at 38 W. 38th Street, # 1606, New York, NY 10001.
3. On information and belief that Defendant, Dan Kim is the principal and motivating force behind the actions of Calla, with offices in New York located at 38 W. 38th Street, #1606, New York, NY 10001.

JURISDICTION AND VENUE

4. This is an action for copyright infringement and arises under the Copyright Act, 17 U.S.C. § 101, et seq., based on acts of copyright infringement committed in the United States. This Court has exclusive jurisdiction of this action under 28 U.S.C. §§ 1331 and 1338 (a).
5. Venue is properly placed in this District for the claims made against Defendants under 28 U.S.C. §§ 1400 and 1391, because a substantial part of the events giving rise to these claims occurred within this district.

NATURE OF THE DISPUTE

6. Plaintiff, which owns copyrights in jewelry designs, brings this infringement action to stop the Defendants from continuing to profit from the blatant infringement of Plaintiff's copyrighted works. Defendants have had access to Plaintiff's works, and Defendants' works are too similar to Plaintiff's copyrighted works to be anything but copies. Defendants' actions have caused Plaintiff irreparable injury. Plaintiff for this reason seeks injunctive and monetary relief for Defendants infringement.

FACTS

7. Plaintiff, Chain & Fantasia, Inc., is a prominent designer of jewelry that it markets and sells jewelry.
8. Chain & Fantasia has duly registered and/or applied for registration of its copyrights, including Registrations and Applications, C & F 2007 Spring Collection (2) VA 1418205 (Registration); C & F 2007 Fall Collection (4) (application); C&F Fall Collection (5) VA 1627545 (Registration); C & F

2007 Fall Collection (6)(application); and C&F 2008 Spring Collection (1).

(application) (Copyrights) [Exhibit A shows Plaintiff's copyrights along with Defendants' infringing items].

9. Chain & Fantasia's Trade Dress of the distinctive arrangements of beads, including small irregular stone like beads, and large beads (Trade Dress) has become well-known in the industry to identify Plaintiff's jewelry.
10. Defendants had access to Chain & Fantasia's copyrighted jewelry and have copied the same.
11. Defendants had infringed Chain & Fantasia's Trade Dress.
12. Chain & Fantasia threatened to institute litigation against Defendants for copyright infringement and Trade Dress infringement, seeking an injunction and damages for infringement and intentional infringement if Defendants did not agree and cease its actions, and account for damages

COUNT I

COPYRIGHT INFRINGEMENT

13. Plaintiff realleges each and every allegation set forth in paragraphs 1-11 inclusive and incorporates them herein by reference.
14. Plaintiff owns the copyrights and copyright registrations.
15. Defendants, with access to and with full knowledge of Plaintiff's rights to the designs willfully and intentionally infringed these rights by making and selling unauthorized pieces of jewelry, substantially similar to Plaintiff's designs.

16. Plaintiff has been damaged by loss of sales and profits by Defendants' infringing activities.

COUNT II

TRADE DRESS INFRINGEMENT

17. Plaintiff realleges each and every allegation set forth in paragraphs 1-15 and incorporates them herein by reference.
18. Plaintiff's designs are known in the jewelry field for distinctive designs; (Plaintiff's Trade Dress).
19. Defendants, with access to and with full knowledge of Plaintiff's rights to the Trade Dress willfully and intentionally infringed those rights by making and selling unauthorized pieces of jewelry, confusingly similar or having a likelihood of being confusingly similar to Plaintiff's Trade Dress.
20. Plaintiff has been damaged by loss of sales and misappropriation of profits by Defendants' infringing activities.

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

- (A) That the Court find Plaintiff's copyrights valid and that Defendants have infringed Plaintiff's copyrights and Trade Dress.
- (B) That the Court find there is a substantial likelihood that Defendants will continue to infringe Plaintiff's copyright and Trade Dress, unless enjoined from doing so.
- (C) That Defendants, their directors and officials, agents, servants, employees, and all other persons in active concert or privity or in participation with them, be preliminary joined during the tendency of this action and

permanently enjoined thereafter, from directly or indirectly infringing Plaintiff's copyrights and Trade Dress, in any manner including, but not limited to, importing, manufacturing, publishing, vending, distributing, offering, selling, displaying, promoting, advertising, licensing, leasing, or disposing of Plaintiff's designs or any works substantially similar hereto or of any works derived from or copies from the designs.

- (D) That Defendants, directors, and officers, agents, servants, employees, and all other persons in active concert or privity or in participation with it be enjoined to recall from all customers, distributors, wholesalers, jobbers, dealers, retailers and distributors, and all others known to Defendants return to Plaintiff any and all originals, copies, or duplicates of the designs, in their possession, custody, or control.
- (E) That Plaintiff be awarded such damages, including compensatory damages and loss on profits, as are appropriate in view of the willful conduct on the part of each of Defendants in an amount of 5,000,000 (five million dollars).
- (F) That there be an accounting ordered of all gains, profits, and advantages derived by Defendants from the infringement, and that it be further ordered that Defendants be required to pay Plaintiff the damages and profits allowable by the law of Trade Dress and by copyright law including the actual damages that Plaintiff has sustained and Defendants' profits attributable to the copyright infringement, or statutory damages at Plaintiff's election.

(G) That Defendants be ordered to pay the Plaintiff the costs of this action and Plaintiff's reasonable attorney fees.

(H) That the Court grant Plaintiff such other and further relief as is just.

Plaintiff demands a Jury Trial.

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Dated: September 10th, 2008.